

21-1695

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

GEORGE DESIGN GROUP, LLC, KIRBY ERDELY,

Plaintiffs-Appellees,

v.

MEANING XUANSHENG,

Defendant,

NEOMAGIC CORPORATION, DBA WWW.MERCADOMAGICO.COM,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Pennsylvania
No. 2:20-cv-01384-WSS, Judge William S. Stickman IV

**CORRECTED
APPELLEES' MOTION TO SUBMIT ON THE BRIEFS**

The subject of this appeal is an order from the district court denying the Defendant-Appellant's motion for more than \$50,000 in attorney's fees allegedly incurred during the 21 days that the case was pending against the Defendant-Appellant. Appx873. This single issue on appeal is whether the district court

judge's ruling was an abuse of discretion. Oral argument is scheduled for April 4, 2023. (Doc. 64). The Plaintiffs-Appellees move this Court to decide the appeal based upon the briefs without conducting oral argument.

The issue of whether the district court judge abused his discretion has been abundantly briefed. The Defendant-Appellant's opening brief in this single-issue appeal was 77 pages long, not counting appendices. The Plaintiffs-Appellees responded with a 25-page brief. The Defendant-Appellant's Reply Brief was then 29 pages long. Thus, at this time, the Defendant-Appellant has now submitted over 100 pages of briefing on this single issue. Accordingly, the Plaintiffs-Appellees respectfully submit that oral argument is not necessary in this case and will only increase both parties' costs.

Counsel for the Plaintiffs-Appellees has conferred with counsel for the Defendant-Appellant, who has indicated that the Defendant-Appellant does not consent to this motion.

Respectfully submitted,

Dated: March 7, 2023

/s/ Stanley D. Ference III
Stanley D. Ference III
courts@ferencelaw.com

Brian Samuel Malkin
bmalkin@ferencelaw.com

FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400 – Telephone
(412) 741-9292 – Facsimile

Attorneys for Plaintiffs-Appellees
Gorge Design Group, LLC and Kirby
Erdely

CERTIFICATE OF INTEREST

Counsel for the Appellees Gorge Design Group, LLC and Kirby Erdely certifies the following:

1. The full name of every party represented by me is:

Gorge Design Group, LLC and Kirby Erdely

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Gorge Design Group, LLC and Kirby Erdely

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party represented by me are:

None.

4. The names of all law firms and the partners or associates that appeared for the party now represented by me in the trial court or agency or are expected to appear and have not already entered an appearance in this court are:

None.

5. No appeal from the same trial court action was previously before this or any other appellate court.
6. Appellees have no information identifying organizational victims in criminal cases and debtors and trustees in bankruptcy cases as required under Fed. R. App. P. 26.1(b) and 26.1(c).

Respectfully submitted,

Dated: March 8, 2023

/s/ Stanley D. Ference III

Attorneys for Plaintiffs/Appellees

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2023, I filed this document was electronically filed using the Court's CM/ECF filing system. Counsel of record was electronically served by and through the Court's CM/E F filing system per Fed. Cir. R. 25(e)

/s/ Stanley D. Ference III
Stanley D. Ference III

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE
REQUIREMENTS**

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) or Federal Rule of Appellate Procedure 28.1(e) because the motion contains **205** words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 27(d)(2) and Fed. Cir. R. 27(d).

2. This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using MS Word in a 14-point Times New Roman font.

/s/ Stanley D. Ference III

Stanley D. Ference III